

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
  
FOR THE MINNEAPOLIS CITY COUNCIL

In the Matter of the Application for a  
Class A On-Sale Liquor License with  
Sunday Sales Submitted by JenRich, Inc.,  
d/b/a Whispers

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND RECOMMENDATION**

The above matter came on for hearing before Administrative Law Judge Kathleen D. Sheehy on July 16, 2007, at the Office of Administrative Hearings in Minneapolis, Minnesota. The OAH record closed at the conclusion of the hearing on July 16, 2007.

Joel M. Fussy, Assistant City Attorney, 333 South 7<sup>th</sup> Street, Suite 300, Minneapolis, MN 55402-2453, appeared on behalf of the City of Minneapolis – Business Licensing (City).

Mark J. Kallenbach, Attorney at Law, 2260 Ridge Drive, Suite 13, Minneapolis, MN 55416, appeared on behalf of Jennifer Ann Wise and JenRich, Inc., d/b/a Whispers (Applicant).

**STATEMENT OF ISSUE**

Should the City Council grant JenRich Inc.'s application for a Class A On-Sale liquor license?

The Administrative Law Judge concludes that the City Council should deny the application.

Based upon all the proceedings in this matter, the Administrative Law Judge makes the following:

**FINDINGS OF FACT**

1. Jennifer Ann Wise and Richard Wise are spouses and business partners who reside at 8095 Trail Haven Road in Corcoran, Minnesota. They each own and operate corporations that are engaged in the adult entertainment business.

2. Richard Wise is the sole owner of MGA Susu, Inc. (MGA Susu). Since approximately 1996, MGA Susu has held a license to operate an adult entertainment establishment out of a building owned by Mr. Wise at 418 3<sup>rd</sup> Avenue North in Minneapolis.<sup>1</sup> On various license applications submitted between 2002 and 2007,

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<sup>1</sup> Ex. 1 (pp. 17-20, and 349).

either Richard Wise or Jennifer Wise is identified as the president of MGA Susu.<sup>2</sup> Jennifer Wise is also identified as the manager of MGA Susu on license renewal applications submitted between 2003 and 2006.<sup>3</sup>

3. Jennifer Wise is the sole owner of JenRich Inc. (JenRich). In 2005, JenRich held a food license to operate a juice bar at the 418 Club. On various license applications either she or Richard Wise is listed as the president of JenRich.<sup>4</sup> Ms. Wise is also the sole owner of RyBran Corporation, which operates an adult entertainment establishment called the “Bear’s Den” in Shelly, Minnesota.<sup>5</sup>

4. From approximately 1996 to April 2006, MGA Susu operated the adult entertainment business at 418 3<sup>rd</sup> Avenue North under the name the “418 Club.” In April of 2006, MGA Susu and/or Richard and Jennifer Wise temporarily closed the 418 Club after a group of dancers quit the club.<sup>6</sup> They reopened the club on October 3, 2006, under the name “Whispers.”<sup>7</sup> Like the 418 Club, Whispers is currently operated by MGA Susu as an adult entertainment establishment offering nude dancing entertainment. At various times between 2002 and 2007, MGA Susu, JenRich, Richard Wise, and Jennifer Wise have held restaurant, food, and tobacco licenses for the 418 Club and Whispers;<sup>8</sup> however, the 418 Club and Whispers have never had a liquor, wine or beer license of any type.<sup>9</sup>

5. Since Whispers reopened in October 2006, Jennifer Wise has been physically present at the club a number of times, and has occasionally worked as a cook. She also performs book-keeping services for the club at her home.<sup>10</sup>

6. Whispers is located in an area that is zoned to permit adult entertainment use, and other adult entertainment establishments are located in the surrounding area, including Déjà vu, Sinners and the Seville. In addition, there are many on-sale liquor establishments in the surrounding downtown and warehouse area. Nothing in the zoning code would prohibit Whispers from obtaining an on-sale class A liquor license.<sup>11</sup>

7. On March 28, 2006, Jennifer Wise, as the individual owner of JenRich, applied for an On Sale Class A Liquor License to be issued in the name of Whispers at 418 3<sup>rd</sup> Avenue North, Minneapolis. The purpose of the application was to allow Whispers to continue to operate as an adult entertainment establishment but to add full liquor service to the establishment.<sup>12</sup>

8. City Licensing Inspector Linda Roberts was assigned to investigate and process JenRich’s on-sale liquor license application. On August 2, 2006, Ms. Roberts

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<sup>2</sup> Testimony of Jennifer Wise; Ex. 1 (pp. 17-27). Jennifer Wise is listed as president and manager of MGA Susu on license applications dated 2004, 2005 and 2006.

<sup>3</sup> Ex. 1. (pp. 17-19).

<sup>4</sup> Testimony of Jennifer Wise; Ex. 1 (pp. 8 and 21).

<sup>5</sup> Testimony of Jennifer Wise.

<sup>6</sup> Testimony of Grant Wilson; Ex. 1 (pp. 86 and 92-100).

<sup>7</sup> Testimony of Jennifer Wise.

<sup>8</sup> Testimony of Linda Roberts; Ex. 1 (pp. 21-27).

<sup>9</sup> Testimony of Linda Roberts.

<sup>10</sup> Testimony of Jennifer Wise.

<sup>11</sup> Testimony of Linda Roberts.

<sup>12</sup> Ex. 1 (pp. 5-8); Testimony of Ms. Wise.

drafted a list of conditions for granting JenRich's on-sale liquor license. It is typical for license inspectors to draft proposed conditions as they process a license application in the event the application is ultimately recommended for approval to the City Council.<sup>13</sup> The proposed license conditions included screening all employees for criminal backgrounds, cleaning up handbills for the business that are distributed and discarded, and trespassing customers based on unacceptable behavior. The draft contained a notice to the applicant that agreeing to the conditions did not guarantee approval of the license application. The draft was not signed by Jennifer Wise or anyone else on behalf of JenRich.<sup>14</sup>

9. On September 13, 2006, while the City's investigation of her liquor license application was pending, Jennifer Wise withdrew her application and was provided a refund of her license fee. Ms. Wise indicated on the withdrawal form that the licensing process had "interrupted her business for too long." Richard Wise hand-delivered the withdrawal form to Linda Roberts.<sup>15</sup>

10. On November 17, 2006, Jennifer Wise re-submitted her application on behalf of JenRich seeking a license upgrade for Whispers to a On Sale Class A Liquor License with Sunday Sales. Ms. Wise listed her husband Richard Wise as treasurer of JenRich on the application after Linda Roberts told her that anyone with an interest in the business should be listed on the application.<sup>16</sup> It is this application that is the subject of this administrative hearing and the Notice and Order for Hearing.

11. In March 2007, Ms. Roberts drafted a License Addendum Agreement that placed additional conditions and restrictions on the Applicant's license in the event it was granted by the City Council. The Addendum stated that these additional obligations would cause the City Council to "look more favorably upon the application of the Applicant." The conditions included not allowing completely nude dancing, mud wrestling, or sexual contact on the premises. Jennifer Wise signed the License Addendum Agreement on March 8, 2007. The Agreement was not signed by anyone on behalf of the City.<sup>17</sup> As with the list of proposed license conditions above, the Addendum Agreement is a standard licensing document typically used by the City when licensing any establishment with an on-sale class A liquor license. Most adult entertainment clubs licensed by the City have signed similar License Addendum Agreements.<sup>18</sup>

12. By letter dated March 30, 2007, Ricardo Cervantes, Deputy Director of the City's Licenses and Consumer Services Division, notified JenRich and Richard and Jennifer Wise of the licensing investigation findings that would be presented to the Minneapolis City Council regarding JenRich's application for an on-sale liquor license. Mr. Cervantes stated that a recommendation [of denial] would be made to the City Council based on the club's (1) failure to restrict acts of sexual contact; (2) failure to comply with business license management responsibilities; (3) failure to comply with

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<sup>13</sup> Testimony of Grant Wilson.

<sup>14</sup> Ex. 2.

<sup>15</sup> Testimony of Linda Roberts; Ex. 1 (p. 10).

<sup>16</sup> Testimony of Linda Roberts; Ex. 1 (pp. 12-15).

<sup>17</sup> Ex. 3.

<sup>18</sup> Ex. 3; Testimony of Linda Roberts and Grant Wilson.

indoor smoking ban; (4) public hearing response; and (5) applicant's failure to meet eligibility requirement based on "good moral character."<sup>19</sup>

13. On April 18, 2007, after meeting with Jennifer Wise and her attorney about the recommendation to deny her license application, City licensing staff referred the matter for an administrative hearing. On May 25, 2007, Assistant City Attorney Joel Fussy filed a Notice and Order for Hearing, and this matter was heard on July 16, 2007.<sup>20</sup> Each of the grounds for denial of the applicant's on-sale class A liquor license application listed in the Notice and Order for Hearing are addressed below.

### **Public Hearing Opposition from Neighbors**

14. On May 24, 2006, the City held a public hearing on JenRich's on-sale liquor license application for Whispers.<sup>21</sup> Notice of the hearing was sent to property owners within 300 feet of the 418 3<sup>rd</sup> Avenue North address. The hearing was held in the community room of a residential condominium located near the establishment. Seventeen persons attended the public hearing, including Jennifer and Richard Wise. The majority of those attending the hearing opposed granting the license application because they felt adding a liquor license to the establishment would negatively impact the livability of the neighborhood. Specifically, those attending the hearing expressed concern that adding a liquor license could worsen criminal activity in the area.<sup>22</sup>

### **Violation of the Minneapolis Indoor Smoking Ordinance**

15. In approximately May or June of 2005, the 418 Club ran an advertisement in the *City Pages* newspaper that stated: "Smoking Permitted! Only Club in Hennepin County with Smoking!"<sup>23</sup>

16. On June 20, 2005, the City issued a Warning Notice to the 418 Club regarding a violation of the City's no-smoking ordinance that occurred in the club and was witnessed by a police officer in May of 2005.<sup>24</sup>

17. On July 14, 2005, the City issued a second Warning Notice to the 418 Club regarding another violation of the City's no-smoking ordinance observed in the club in July 2005.<sup>25</sup>

18. On September 2, 2005, the City issued a Citation Notice to the 418 Club for continued violations of the City's no-smoking ordinance.<sup>26</sup> (At that time, the City's smoking ordinance, which went into effect in March of 2005, prohibited smoking only in licensed food establishments.) Richard Wise, d/b/a JenRich Inc. and the 418 Club, appealed the citation, arguing that only the juice bar in the building was a licensed food establishment and that JenRich, which held the food license, did not permit smoking in the juice bar's leased space. Mr. Wise argued further that since MGA Susu is not a

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<sup>19</sup> Testimony of Grant Wilson; Ex. 1 (pp. 37-39).

<sup>20</sup> Notice and Order for Hearing.

<sup>21</sup> Testimony of Linda Roberts; Ex. 1 (pp. 29-35).

<sup>22</sup> Testimony of Linda Roberts; Ex. 1 (p. 35).

<sup>23</sup> Ex. 1. (pp. 350 and 356).

<sup>24</sup> Ex. 1 (pp. 342-343).

<sup>25</sup> Ex. 1 (pp. 344-345).

<sup>26</sup> Ex. 1 (pp. 346-347).

licensed food establishment, it was not required to comply with the ordinance.<sup>27</sup> On December 26, 2005, Minneapolis Hearing Officer Fabian Hoffner upheld the citation against the 418 Club in its entirety. In his decision, Hearing Officer Hoffner noted that less than two weeks after the City's indoor smoking ordinance took effect, MGA Susu withdrew its food establishment license for the 418 Club and Richard Wise (d/b/a JenRich and the 418 Club Juice Bar) applied for a food manufacturer's license. Despite this shift in the food licensing status of MGA Susu and JenRich, Hearing Officer Hoffner noted that beverages purchased at the juice bar were consumed and served freely throughout the 418 Club and that the establishment was plainly operated as a single business entity. Hearing Officer Hoffner concluded that the relationship between the two corporations owned and operated by Richard and Jennifer Wise was one of "coordinated and shared purpose" and that the two were "acting as a unit" to further "their joint business venture consisting of the single business entity of the 418 Club." Accordingly, Hearing Officer Hoffner fined the 418 Club \$750.08 for its violation of the City's indoor smoking ordinance. The fine included the City's costs of enforcement.<sup>28</sup>

19. On March 9, 2007, the City conducted an undercover inspection of Whispers in response to complaints received about possible violations of the City's indoor smoking ordinance. Minneapolis Police Investigator David Rodriguez and City License Department Manager Grant Wilson conducted the inspection. After entering the club and purchasing non-alcoholic beverages, they were told by a dancer that the smoking room was located on the fourth floor of the building. Mr. Wilson asked for a tour of the building, and the dancer took him to the 4<sup>th</sup> floor where they each smoked a cigarette. The 4<sup>th</sup> floor consisted of an open room with several chairs and large ash trays.<sup>29</sup>

20. On March 12, 2007, the City issued a Citation Notice to MGA Susu and the 418 Club for noncompliance with the City's no-smoking ordinance relating to the undercover inspection of March 9, 2007.<sup>30</sup>

21. In a letter to Grant Wilson dated March 19, 2007, Mark Kallenbach, counsel for MGA Susu, stated that MGA Susu operates only a smoke shop on the fourth floor of the building, whereas JenRich occupies the first three floors of the building. Because no food or entertainment are provided to patrons in the fourth floor "smoke shop," Mr. Kallenbach stated that MGA Susu did not violate the City's indoor smoking ordinance.<sup>31</sup> MGA Susu appealed the citation and a hearing on the citation was held on May 29, 2007.<sup>32</sup>

22. On April 18, 2007, Whispers ran an advertisement in the *City Pages* newspaper promoting its "indoor smoking lounge."<sup>33</sup>

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<sup>27</sup> Ex. 1 (p. 358).

<sup>28</sup> Ex. 1 (pp. 348-353).

<sup>29</sup> Testimony of Grant Wilson; Ex. 1 (pp. 334-335).

<sup>30</sup> Ex. 1 (pp. 336-340).

<sup>31</sup> Ex. 6.

<sup>32</sup> Ex. 1 (pp. 361-366).

<sup>33</sup> Ex. 1 (p. 341). See also, Ex. 1 (p. 356).

23. The tobacco license held by MGA Susa allows it to sell cigarettes over the counter at its business located at 418 3<sup>rd</sup> Avenue North. It does not allow it to permit smoking in the establishment in violation of the Minneapolis smoking ordinance.<sup>34</sup>

24. On June 18, 2007, Minneapolis Hearing Officer Fabian Hoffner issued a decision upholding the March 12<sup>th</sup> citation in its entirety and assessed a fine of \$711.80 against MGA Susu d/b/a 418 Club and Whispers.<sup>35</sup> Hearing Officer Hoffner again found that the entire area of the 418 Club was operated as a single business facility. According to the decision, the 4<sup>th</sup> floor smoking lounge and the remainder of the 418 Club were indistinguishable. Employees and customers of the club freely traveled between the two areas, and the un-named and un-staffed lounge was held out as a smoking room and not as an exclusive tobacco or smoke shop. Accordingly, Hearing Officer Hoffner found that the true purpose of the fourth floor lounge was as an impermissible smoking area for the 418 Club.<sup>36</sup>

## **Business Management Failures**

### **(1) Sexual Contact Between Dancers and Patrons**

25. In February of 2007, the Minneapolis Police Department conducted an undercover investigation into complaints of prostitution and alcohol being served at Whispers or the 418 Club. Over the course of three days, several officers went to the club and purchased private dances from dancers employed at the club. In total, eight lap dances were purchased from seven different dancers and each involved sexual contact between the dancer and the police officer.<sup>37</sup>

26. On March 9, 2007, in addition to his investigation into possible violations of the City's indoor smoking ordinance, City License Department Manager Grant Wilson also investigated whether dancers at the club were engaging in inappropriate sexual contact with patrons.<sup>38</sup> Mr. Wilson purchased a private lap dance from a dancer who engaged in sexual contact with him during the course of her dance.<sup>39</sup>

### **(2) Employment of Steve Morrison as Club Manager**

27. Steve Morrison is a Level 1 registered sex offender who has a gross misdemeanor conviction for theft (1993); a misdemeanor conviction for sale of narcotics (1995); a misdemeanor conviction for obstructing legal process (1996); and four felony convictions for soliciting/promoting prostitution (2002).<sup>40</sup>

28. Richard Wise hired Steve Morrison to be a manager of the 418 Club on October 28, 2004. Mr. Morrison was terminated from his position for "behavior issues"

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<sup>34</sup> Testimony of Linda Roberts; Ex. 1 (p. 27).

<sup>35</sup> Ex. 1 (pp. 361-366).

<sup>36</sup> Ex. 1 (pp. 361-366).

<sup>37</sup> Testimony of Sergeant Daniel Pommerenke; Ex. 1 (pp. 47-48).

<sup>38</sup> Testimony of Grant Wilson; Ex. 1 (p.46).

<sup>39</sup> Testimony of Grant Wilson; Ex. 1 (p. 46).

<sup>40</sup> Testimony of Grant Wilson; Ex. 1 (p. 332); Ex. 7.

on or about March 31, 2006, after he allegedly threatened and assaulted a group of dancers who quit the club.<sup>41</sup>

29. In February of 2007, during his undercover investigation into alleged prostitution at the 418 Club, Minneapolis Police Sergeant Daniel Pommerenke observed Steve Morrison in the 418 Club. Sergeant Pommerenke saw Mr. Morrison step off an elevator with a group of dancers, escort the dancers to the bar, and then enter the DJ booth. According to Sergeant Pommerenke, Mr. Morrison appeared to be directing the dancers to interact with specific customers.<sup>42</sup>

30. On February 20, 2007, Mr. Morrison was arrested during a traffic stop for allegedly not properly registering his address as required of convicted sex offenders. During an interview with the police, Mr. Morrison stated that he worked as a manager at the 418 Club.<sup>43</sup>

### **(3) Criminal Activity/Police Calls to the Premises**

31. Between January 2000 and June 2006, the police have been called to 418 3<sup>rd</sup> Avenue North 102 times.<sup>44</sup> Approximately 32 of the calls resulted in police reports. In the year 2000, Minneapolis police officers filed reports on eight alleged crimes occurring at the 418 Club, including six assaults and several acts of prostitution by the entertainers.<sup>45</sup> In 2002, police filed seven reports on alleged assaults occurring at the 418 Club.<sup>46</sup> In 2004, the police filed two reports on alleged assaults occurring at the 418 Club.<sup>47</sup> In 2005, the police filed nine reports on alleged assaults occurring at the 418 Club and one report of alleged criminal sexual conduct.<sup>48</sup> One police report alleged that the club's manager, Steve Morrison (a/k/a "Savon"), punched one of the dancers in the face.<sup>49</sup> In 2006, the police filed two reports on alleged assaults occurring at the 418 Club.<sup>50</sup> One report alleged that Steve Morrison assaulted and threatened a group of dancers who quit the club.<sup>51</sup>

32. A review of the police reports indicates that poor management practices contributed to the criminal/assaultive behavior occurring at the club and the resulting high volume of police calls. For example, five police reports concern allegations of managers assaulting dancers.<sup>52</sup> Three reports concern allegations of dancers brutally assaulting dancers.<sup>53</sup> Two reports concern allegations of managers assaulting customers.<sup>54</sup> Three reports allege that management restricted employees (dancers)

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<sup>41</sup> Testimony of Jennifer Wise; Ex. 1 (pp. 86, 92-100, 319-328) and Ex. 10.

<sup>42</sup> Testimony of Sergeant Pommerenke; Ex. 1 (p. 329).

<sup>43</sup> Ex. 1 (p. 330).

<sup>44</sup> Ex. 1 (pp. 81-85).

<sup>45</sup> Ex. 1 (pp. 90-91, 256-318).

<sup>46</sup> Ex. 1 (pp. 88-89, 191-250).

<sup>47</sup> Ex. 1 (pp. 88, 183-190).

<sup>48</sup> Ex. 1 (pp. 86-88, 103-182).

<sup>49</sup> Ex. 1 (p. 86 and 103-106).

<sup>50</sup> Ex. 1 (pp. 86 and 101-102).

<sup>51</sup> Ex. 1 (pp. 86 and 92-100).

<sup>52</sup> Ex. 1 (pp. 103-106, 145-148, 256-262, 269-272, 320-328).

<sup>53</sup> Ex. 1 (pp. 112-24, 187-90, 200-07).

<sup>54</sup> Ex. 1 (pp. 101-02, 208-11).

from reporting assaults,<sup>55</sup> and four reports allege that employees refused to cooperate with the police in identifying assault suspects.<sup>56</sup> One report, concerning an alleged assault by a dancer on another dancer, noted that club owner Richard Wise refused to provide the police with the suspect's name saying, "I won't give Minneapolis anything."<sup>57</sup> Finally, another report concerning an alleged criminal sexual assault at the club stated that employees consumed alcohol on the premises despite the fact that the club did not have a liquor license and should not have had alcohol on the premises.<sup>58</sup>

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Administrative Law Judge and the Minneapolis City Council have jurisdiction in this matter under Minnesota law and the Minneapolis City Charter.<sup>59</sup>
2. The City has complied with all relevant procedural legal requirements.
3. The City gave the Applicant proper and timely notice of the hearing in this matter.
4. The Minneapolis Charter authorizes the City Council to license and regulate all bars, taverns, restaurants and cafes. According to Chapter 4, Section 5 of the Charter:

Nothing herein shall limit the authority of the City Council to impose by ordinance further restrictions or limitations on the granting of any liquor license . . . Except as herein provided, all such on-sale and off-sale liquor establishments shall continue to be subject to the pertinent statutes of the State of Minnesota and the City ordinances of the City of Minneapolis ...<sup>60</sup>

5. Minnesota law provides that the city or county having jurisdiction over on-sale licenses to sell intoxicating liquor shall conduct background and financial investigations of applicants on initial applications for on-sale licenses.<sup>61</sup> No license may be issued if the results of the investigation show that issuance "would not be in the public interest."<sup>62</sup>

6. Minnesota law provides further that no license may be issued to "a person not of good moral character and repute."<sup>63</sup>

7. The Minneapolis Code of Ordinance contains the following provisions relating to the minimum standards and conditions required in order to hold a business

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<sup>55</sup> Ex. 1 (pp. 107-110, 191-195, 200-207).

<sup>56</sup> Ex. 1 (pp. 112-24, 187-90, 226-50).

<sup>57</sup> Ex. 1. (pp. 88, 204).

<sup>58</sup> Ex. 1 (pp. 86-91).

<sup>59</sup> Minn. Stat. §§ 14.50, 14.55, 340A.402(3), and 340A.412(2)(b); Minneapolis Charter Chapter 4, Section 5, and Minneapolis Code of Ordinance §§ 259.250, 362.100, 362.260, 362.290, 362.500, and 362.510.

<sup>60</sup> Minneapolis Charter Chapter 4, Section 5.

<sup>61</sup> Minn. Stat. § 340A.412, subd. 2(a).

<sup>62</sup> Minn. Stat. § 340A.412, subd. 2(b).

<sup>63</sup> Minn. Stat. § 340A.402(3).



license. Failure to comply with any of these standards and conditions shall be adequate grounds for the denial, refusal to renew, revocation or suspension of the license:

- (1) It shall be the responsibility of the licensee to take appropriate action to prevent further violations following conduct by any persons on the business premises, including parking areas, in violation of any of the following statutes or ordinances: . . .
  - b. Minnesota Statutes, Sections 609.321 through 609.324, which prohibits prostitution and acts relating thereto. ...
  - h. Minnesota Statutes, Section 609.72 and Section 385.90 of this Code, which prohibits disorderly conduct. ...
  - j. Minnesota Statutes, Sections 609.74 and 609.745, which prohibit public nuisance and permitting a public nuisance. ...
  - l. Any other criminal activity arising out of the conduct of the business.
- (2) It shall be the responsibility of the licensee to maintain and operate the business in compliance with all applicable laws and ordinances, including the zoning, fire, environmental health, environmental management, license, food, liquor, housing and building codes.
- (3) The licensee is directly and vicariously responsible for any violations on the premises, including parking areas, by any employees, independent contractors, other persons hired by the licensee, or otherwise under the supervision or management of the license.
- (4) It shall be the responsibility of the licensee to provide adequate security to prevent criminal activity, loitering, lurking and disorderly conduct on the business premises, including parking areas. ...
- (9) The provisions of this section are not exclusive. Adverse license action may be based upon good cause as authorized by Chapter 4, Section 16 of the Charter. This section shall not preclude the enforcement of any other provisions of this Code or state and federal laws and regulations.<sup>64</sup>

8. Minnesota law defines “prostitution” to mean engaging or offering or agreeing to engage for hire in sexual penetration or sexual contact. “Sexual contact” means any of the following acts, if the acts can reasonably be construed as being for the purpose of satisfying the actor’s sexual impulses: (i) the intentional touching by an individual of a prostitute’s intimate parts; or (ii) the intentional touching by a prostitute of another individual’s intimate parts.

9. The Applicant, JenRich Inc., and its President Jennifer Wise, have had an interest in operating the adult entertainment establishment at 418 3<sup>rd</sup> Avenue North since at least 2002. The 418 Club had a history of (1) violating and circumventing the

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<sup>64</sup> Minneapolis Code of Ordinance § 259.250.

City's indoor smoking ordinance; (2) failing to restrict acts of illegal and impermissible sexual contact between its dancers and customers; and (3) having a high level of criminal and nuisance activity on its premises, resulting in part from poor management practices. It is appropriate to attribute these violations and poor management practices to the Applicant based on the integrated business interests and operations of MGA Susu and JenRich.

10. The Applicant has the burden of proof to establish by a preponderance of the evidence that the City should issue it an on-sale class A liquor license.<sup>65</sup>

11. The Applicant has failed to establish by a preponderance of the evidence that the City should grant it an on-sale liquor license.

12. Good cause exists to deny the Applicant's on-sale liquor license application based on the violations and infringement of applicable laws and regulations relating to the adult entertainment establishment at 418 3<sup>rd</sup> Avenue North in Minneapolis.

13. Granting the Applicant's liquor license application would not be in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS RECOMMENDED that the City Council DENY the application of JenRich Inc., d/b/a/ Whispers, for an On-Sale Class A liquor license.

Dated: August 15, 2007.

/s/ Kathleen D. Sheehy  
KATHLEEN D. SHEEHY  
Administrative Law Judge

Reported: Digital recording. No transcript prepared.

### **NOTICE**

This Report is a recommendation, not a final decision. The Minneapolis City Council will make the final decision after a review of the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendation. Pursuant to Minn. Stat. § 14.61, the City Council will not make its final decision until after it has provided each party adversely affected an opportunity to file exceptions and present argument to the Minneapolis City Council. Parties should contact the City Clerk, Council Information

<sup>65</sup> Minnesota Rule, part 1400.7300, subpart 5.

Division, 350 South Fifth Street, Room 304, Minneapolis Minnesota 55415-1382; telephone number 612-673-3136 to find out the process for filing exceptions or presenting argument.

## MEMORANDUM

City of Minneapolis licensing staff have recommended denying JenRich's liquor license application based on public comment in opposition to the license, as well as the history of the 418 Club's violations of the City's indoor smoking ordinance, its failure to restrict acts of illegal and impermissible sexual contact between its dancers and customers, and its history of a high level of criminal and nuisance activity on its premises. The Applicant argues that it is a separate entity from MGA Susu and the 418 Club, and that the City should not attribute MGA Susu's and the 418 Club's past misconduct and negative history to JenRich and Whispers.

The Administrative Law Judge finds the Applicant's contention that it should be considered a separate entity from the 418 Club to be unpersuasive. Jennifer and Richard Wise are spouses and both have been involved in the operation of the 418 Club and Whispers. Both clubs are operated by MGA Susu, and Jennifer Wise is identified as the president and manager of MGA Susu on license applications filed with the City in 2004-2006. Ms. Wise performs bookkeeping services for MGA Susu, and she testified that since Whispers opened on October 2006, she has been physically present at the club and has cooked there on occasion. In addition, Mr. Wise has been listed as the President of JenRich on a food license application, and was listed as JenRich's Treasurer on its liquor license application. The evidence clearly established that the Wises have integrated their business interests in MGA Susu and JenRich, and that they operate Whispers (formerly the 418 Club) as a single establishment with multiple licenses. Therefore, the Administrative Law Judge concludes that it is reasonable and appropriate to consider the 418 Club's past violations of City ordinances and history of criminal conduct when determining whether to grant JenRich's liquor license application for Whispers.<sup>66</sup>

Municipalities have broad discretion in determining "the manner in which liquor licenses are issued, regulated, and revoked."<sup>67</sup> The Minneapolis Code of Ordinances permits the City Council to deny a liquor license application if the Applicant violates statutes or ordinances prohibiting prostitution, disorderly conduct, public nuisance, or any other criminal activity arising out of the conduct of the business. Here, the City established that between 2000 and March of 2006, the 418 Club had a history of a high volume of police calls regarding assaults and other criminal conduct occurring at the club. The suspect in a number of the assaults was the 418 Club's own manager, Steve

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<sup>66</sup> See, *In re Application for License by Superior Home Care*, C0-99-1758 (Minn. App. June 20, 2000) (unpublished opinion). See also, *Indiana Alcoholic Beverage Commission v. Chinn*, 293 N.E.2d 520 (Ind. App. 1973) (Court held that husband who had financial interest in wife's application must meet same criteria as applicant. Because husband was involved in gambling, he was not found to be of "high and fine repute" and court held that wife's application for license could be denied based on husband's background.)

<sup>67</sup> *Bourbon Bar & Café Corp. v. City of St. Paul*, 466 N.W.2d 438, 440 (Minn. App. 1991) (citing, *Sabes v. City of Minneapolis*, 265 Minn. 166, 171, 120 N.W.2d 871, 875 (1963)).

Morrison. Mr. Morrison is a Level 1 registered sex offender and in at least one reported incident he is alleged to have threatened and assaulted a group of dancers who quit the club. In addition, undercover investigations conducted by City licensing staff and the Minneapolis police found that acts of illegal or impermissible sexual contact were occurring between the 418 Club's dancers and patrons. Finally, the 418 Club was twice cited and fined for violating the City's indoor smoking ordinance. After the first citation was upheld, and a month before the hearing on the second citation, the club ran an advertisement in the *City Pages* promoting its "indoor smoking lounge"<sup>68</sup> in what appears to be blatant and willful disregard of the City's indoor smoking ordinance. This citation was likewise upheld, and the Applicant maintains that the smoking lounge has since been closed. Based on the club's history of non-compliance with applicable laws and ordinances, the City Council may deny JenRich's application for a liquor license.

Moreover, even if an applicant meets the minimum standards for a liquor license, a city council may deny an application if there are specific objections raised by community residents whose lives would be directly affected by the liquor license upgrade.<sup>69</sup> Here, neighboring residents and/or business owners have expressed their opposition to granting JenRich's liquor license application based on their concern that such an upgrade will exacerbate criminal activity in the area. Such opposition is sufficient to support a finding that granting JenRich's license application would not be in the public interest.

For all of these reasons, the Administrative Law Judge recommends that JenRich's application for an on-sale class A liquor license be denied.

K.D.S.

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<sup>68</sup> Ex. 1 (p. 341). See also, Ex. 1 (p. 356).

<sup>69</sup> *Country Liquors, Inc. v. City Council of City of Minneapolis*, 264 N.W.2d 821 (Minn. 1978).